

AmeriCorps Rulemaking Session

Conference Call
October 7, 2004
12:00 p.m. CDT

Coordinator: Hello and welcome to the Martin Teleconference. Following today's presentation there will be a formal question and answer session. At that time instructions will be given, should anyone wish to ask a question. Until then, all lines will remain in a listen-only fashion. I would like to now turn the meeting over to today's host, Mr. David Eisner. Sir, you may begin.

D. Eisner: Hi, this is David Eisner, and this is the final public input session, for the ruling making of the draft rules, although there are still a few days to send written comments. With me in the room are: Kim Mansaray, from AmeriCorps State & National; Frank Trinity, our General Counsel; Susannah Washburn, Senior Advisor to the CEO; and Charlie Briggs from AmeriCorps. We all thank you for joining today's call.

We are very excited about the proposed rule. We think that we were able to listen and glean a lot of information from our discussions prior to drafting the rule with all of our stakeholders. We think that we have pushed hard to build a rule that positions AmeriCorps for growth that increases the leverage of federal dollars, one that resolves longstanding issues in a way that's definitive and that moves us past a lot of the issues that have created challenges for us, particularly in the appropriations process.

We think that we are moving toward a fair and equitable solution and we are moving, as well, toward an appropriate level of sensitivity to rural, remote resource for program. We feel that we're focused on taking into account unique circumstances and programs and the unique nature of many programs, not only in terms of the circumstances in which they work, but the kinds of programs that they are and the constituencies that they serve.

If we do get this right, we believe that we will have made substantial progress in increasing predictability for our grantees, decreasing burdens on our grantees and enabling grantees to build their business model without the kind of insecurity that has been manifest, going one year to the next, not knowing what our business models are going to be, what our priorities are going to be. A lot of that uncertainty will become resolved as a result of these being inside the federal register, rather than being released in guidelines on a yearly basis.

All that being said, when we released the draft rule, we were confident that we would still continue to learn a lot more from the field and that our grantees, state commissions and others in the field that are the real experts at doing this work and that you'd provide valuable perspective. Now toward the end of our comment period, we are even more in that category. We have learned an incredible amount that will enable us to make these rules better, smarter and more equitable.

We deeply appreciate the care and energy that folks have put in to giving us their comments on every element of the rule. We also deeply appreciate the constructive environment that all of these comments came in. It very much felt like we were working on one side of the table to collaboratively address issues. That remains our intent as we move into the final rule. I am very confident that today we will continue to receive very valuable input that we need to hear.

As I mentioned, this is the last public session in our 60-day comment period. We've had five in-person meetings and one other conference call. If after this call is over, if you or someone that you know, wants to make an additional comment, you can e-mail, fax it or drop off comments. The e-mail address is proposedrule@cns.gov. The fax number or address for dropping it off is also on the Web site.

When we're done with the comment period, we're going to consider that input, and eventually publish a final rule in the Federal Register, which will be together with the summary of and response to the comments that we received during the comment period. The final rule will take effect no sooner than 30 days after its publication in the register.

So I think we're at the point where we should turn to your input. We have, in each of our comment periods, requested that speakers limit their comments to five minutes, and we will enforce that on this call. I think what we're going to try to do is ask for comments generally in order of issues. The issue areas that we're going to ask for is first sustainability, then grant selection criteria and then cost per FTE, then member services activities, then tutoring requirements, then state commission flexibility to operate national service programs, then performance measures and evaluation and then other.

If anyone feels — I know that it's difficult sometimes to stay, we're going to try to hang loosely to that. If someone needs to go early, then press the button in the earlier round.

What I'd like to do first — operator are you there?

Coordinator: Yes I am.

D. Eisner: What I'd like to do first is get a sense of how many people want to make a comment on any issue, so I'd like to ask folks to press their buttons, so that we can see how many people we have, press *1. Then what I'd like to do is basically erase that list and start with just the first issue, who wants to talk about sustainability. Is that all right, Maureen?

Coordinator: Yes, sir.

D. Eisner: So I guess at this time if you'd like to make a comment press *1. That's again to make a comment at any point during our day, during this meeting. How many folks do we have?

Coordinator: I have four.

D. Eisner: Well then why don't we just start out by not restricting everybody, let's just take those four and then we'll do this again.

Coordinator: Our first question comes from Jeff Coomber.

J. Coomber: My question or my concern is with the tutoring requirements, so do you want us to drop all the way down there?

D. Eisner: Yes, you can start with tutoring requirements.

J. Coomber: Okay. Basically I'm really concerned, because this would really decimate our program. I'm with a county superintendent's school office, and we have 56 people who serve as reading and math tutors, out in schools throughout our county.

D. Eisner: Can you name your county and state?

J. Coomber: Yes, it's Currant County, California. It's an area that's probably most famous for being the area around where the Grapes of Wrath was based. So you think of it as a farm working community, Bakersfield is the center of it. But we serve not only Bakersfield, but four of the outlying communities. These are communities that are hard to staff with teachers, let alone with paraprofessionals that meet the requirements of "No child left behind." We just started our ninth year, providing reading and math tutors.

Each of our tutors, as part of the selection process, and there's an extensive process we go through, do have to pass a reading and math proficiency test. This test, the levels they have to pass, is approximately equivalent to, not somebody who is close to an associate degree, but not above it. You have to realize, we have a fulltime program, so the members are serving fulltime during the day, so if they go to school, it's at night. Most of our members are going to community college, because they can take those night classes.

Though we've really made attempts to try to recruit people who have at least two years of college, we only have one four year college in our area, and for those who do go to that, even though we got a lot of interest from Cal State Bakersfield, they often cannot get those night classes that they need for the upper division level. So we lose a lot of potential applicants, because they're just not able to devote their daytime.

We also live in an area that unfortunately has a relatively low number of students that go on to college. So by having this program, not only are we recruiting people who have an interest in college, but probably both the financial help and the experience of working in the schools. Many or actually most of our members want to become teachers or counselors. So you have, basically a program here that not only helps the students, but is also helping the AmeriCorps members achieve their goals. I mean the whole thing is about expanding opportunity.

Unfortunately, if we had to require that they have at least two years of college or an associate's degree, we would be very limited. In fact this year of the 56 members, only ten have that level of education. Despite our best efforts, we just don't get that many people that have that level. But they're capable, in fact our principals at the school sites, have told us that the AmeriCorps members are actually more effective as tutors,

than their instructional aids, because of the ongoing supervision and training that they do receive.

One other concern I have is that this rule is being applied to only programs that serve in schools or LEAs, but not in non-profit organizations. The situation is that when they're working in the schools, they are under the guidance of teachers or reading specialists, and in fact they probably have a little more control over that type of — that they're tutoring the kids according to the standards of "No child left behind."

D. Eisner: Thank you. I forgot to mention two things. First of all, we're not really in a position to answer questions or comment or ask questions, except for clarifying questions, and I do have a couple of clarifying questions. But I also forgot to note that normally Rosie Mauk would be here in the room. We've done this public comment road trip, regrettably without her, because she's been ill. Although I do believe that she's actually listening in on this call and is hearing the comments. I know that we all wish her a speedy recovery.

A specific comment — are the AmeriCorps members enrolled by the schools or by your organization?

J. Coomber: By our organization. As I said, we are the county superintendent of schools office, so we would be considered an LEA.

D. Eisner: So you are an LEA. Are you saying that these AmeriCorps members, absent an AmeriCorps rule, would or would not be covered under "No child left behind?"

J. Coomber: They would not have the associate's degree or at least two years of college that would be required of a paraprofessional under "No child left behind." So obviously they would be unable to say serve in a school as an instructional....

D. Eisner: I'm sorry, I want to make sure — my clarifying question is, are you saying that "No child left behind," absent any rules from AmeriCorps, would not apply to your tutors? Would your tutors have to meet the paraprofessional requirement, in the absence of the AmeriCorps requirement or is it solely the AmeriCorps requirement that is making your tutors subject to "No child left behind?"

J. Coomber: Under "No child left behind" let's say if those schools individually decided to hire our members, separate from AmeriCorps, most of them would not qualify, because they would not have the associate's degree or at last the two years of college that is required of paraprofessionals.

D. Eisner: I understand that they wouldn't qualify. I'm trying to figure out whether "No child left behind" already applies to them.

J. Coomber: Written as this year, no it doesn't, because I understand that AmeriCorps is exempt from the requirements of "No child left behind" at this time.

D. Eisner: Here's where I'm trying to get the clarifying question. As we understand it, different states have enforced "No child left behind" differently, making different requirements. To the extent we're trying very hard to make sure that our rule does not add additional burdens. So that if an AmeriCorps member in California, in your

circumstances, is not subject to “No child left behind” we would try to make sure that our rule would not make them subject to “No child left behind.”

However, if a program in your exact circumstances, in California, would be subject to “No child left behind” then we would not anticipate a rule that would create an exemption for them, from “No child left behind,” which is why I’m trying to figure out whether a program of your — regardless of what we do, whether a program of your character, under California law, is subject to “No child left behind.”

J. Coomber: No, under California law, the AmeriCorps members are exempt from the “No child left behind” requirements.

D. Eisner: Thank you.

Coordinator: Our next question comes from Linda Cohen.

L. Cohen: Hello. I have two, I guess, questions. One which I think is related to sustainability and one, which probably falls under the category of other. Since we only have a few people asking questions, should I pose them both now?

D. Eisner: Well I want to make sure that what we’re accepting is public comments. So you can make comments that address both points, to the extent you wish.

L. Cohen: Okay. As I said, the first comment, if you will, I believe would fall under the category of sustainability, and it has to do with, I guess you would call it the sliding scale for the match, the gradual increase in the match over the ten years. I am the executive director of the New York State Corps Collaboration, which is an Association of Youth Corps, with a longstanding association with AmeriCorps. In fact we have run programs for over ten years.

I don’t know if this is unique, but one of the quirks, and I’m sure you’re aware of this, of the philanthropic community in New York State is there are pockets of wealth, but for instance upstate, not that there aren’t great philanthropists there, but a relative discrepancy between the amount of wealth and the amount of philanthropic dollars that are available upstate and available downstate. What I am finding, informally, from talking to my programs, is that there seems to be an unstated assumption in the proposed rule, that the philanthropic communities or non-federal dollars, if you will, can fill the gap between the 33% match and the 50% match, over the course of those seven years.

I was going to pose the question, “Am I correct in that assumption?” But I guess I will simply say that if that is the assumption upon which the rule is based, I would strongly feel that in many communities in New York State, that’s not the case. A lot of these communities, which are in rural areas, or very, very depressed urban areas, are basically tapped out of philanthropic dollars or the non-federal dollars. So I guess I will leave the comment at that, if you are unable to respond.

D. Eisner: Thank you, that’s a helpful comment.

L. Cohen: Okay. Then as I said, the other comment has to do with the no refill policy, which I guess falls under the category of "other." I was going to ask a question, let me see if I can recast it in terms of a comment.

In keeping with what is stated in the preamble to the proposed rule and in your background material to the proposed rule, one of your chief goals, and I think you just stated it again, actually, is to have some sort of consistency, some sort of predictability, some sort of uniformity in policies covering AmeriCorps. I will say this, that the Youth Corps within my program, within my collaboration, have found the no refill rule to be extremely burdensome. I'm sure you've been hearing this from other folks, because we do speak to one another.

So beyond that, I would just say that it seems to me that this is the exact kind of situation in which rule-making could help to clarify what the policy is. So I believe you said in this proposed rule that it was your intention to address it outside of rule-making, and I would simply state that it seems to me to be the exact kind of situation where rule-making could really play a major role in helping to clarify what the situation is.

D. Eisner: Thank you. Just to clarify the position, I don't think you actually straight-up said it, but you're suggesting that we modify our refill policy to allow refill. Do you have any further clarification on the policy that you would propose? Can you get any more specific about exactly what your proposal is doing?

L. Cohen: Yes, I can. As I said, I had sort of written these thoughts in terms of a questions, so I was trying to recast them on the fly here.

D. Eisner: I appreciate that.

L. Cohen: My understanding and I don't know how accurate this is, but up until the last couple of years, there was some flexibility in allowing programs to refill. So for instance if a member left for whatever combination of reasons, they got a job, they wanted to go back to school, they didn't like the program or there were compelling personal circumstances, if there was a vacancy in the program, the program could refill, up until the point it became impossible, where it became evident that this member was not going to be able to fulfill his service requirements. I think corresponding to about the time of the enrollment freeze, there was a change in that policy, which basically prevented refills. I think what my programs would like to see, is going back to the earlier policy. Where there was more flexibility.

D. Eisner: Thank you.

L. Cohen: I know that varied from state-to-state, because for instance in New York, I know we have a December 31st, fulltime enrollment cutoff. As long as we're on the topic, some of those things, a rule could help to clarify that, so there wouldn't be this discrepancy among states. But at the very least, I think my programs would like to see going back to the earlier policy of some flexibility, as opposed to a no refill policy. Did that help?

D. Eisner: That helped enormously. I just want to make sure I'm hearing what you said at the end there, about.... Are you saying that you'd rather see consistency of rules, rather than state flexibility to impose their own or is that not what you meant?

L. Cohen: I think there are two separate issues here, and perhaps I clouded them, unnecessarily. Let me just talk about my program and maybe it will become clearer. Up until about the time of the enrollment freeze, which I believe was late 2002, it's my understanding that programs that had a vacancy, my program, if it had a vacancy, could refill a slot. New York State has a fulltime enrollment cutoff that it imposes by contract, of December 31st. So if we couldn't fill it with a fulltime member, we were sometimes allowed to convert it to two half-time slots or some combination of slots.

That's probably a separate issue, that fulltime enrollment cutoff. The only reason I brought it up is to say that I think there were some discrepancies among the states, as to how refills were handled.

D. Eisner: Okay. Thank you very much.

L. Cohen: Okay.

Coordinator: Our next question comes from Martin Weinstein.

M. Weinstein: Good morning from California. Hi, David.

D. Eisner: Hi.

M. Weinstein: I'm calling and representing the California AmeriCorps Alliance, which represents most of the programs in California, including Jeff Coomber's program, as well as I'm serving as the Executive Director of Bay Area Community Resources, which has been running BayAc AmeriCorps, since the inception of AmeriCorps. So I have pretty much three comments, not in the form of questions, but I'd like to give them all three now.

The first one relates to sustainability, and I think our alliance, for sure, supports and commends you for keeping the competition open and not imposing arbitrary time limits on how long a program can participate in AmeriCorps. We would also, it's somewhat additional to the current AmeriCorps rule, but we would like to hear some clarification down the road, about how this proposed policy would affect other national service programs, particularly VISTA, which there seems to be some confusion on.

D. Eisner: I'm sorry to interrupt, but do you have a particular worry that you want to make sure we deal with on that?

M. Weinstein: On the time limits?

D. Eisner: No, on the impact on VISTA.

M. Weinstein: Yes, well on a particular case study example, we've gotten some information that VISTA programs, even if they're in cost share, do have time limits. But it has become unclear to us where that policy comes from and if that policy actually exists.

D. Eisner: Okay. Thank you. Sorry, I won't interrupt again.

M. Weinstein: No problem ... feel free to. The second issue relates to evaluation, which I know has been a challenging topic for everyone, but I think that we understand and support the need and the potential power of evaluation. I would just urge the corporation to be very clear about some of the definitions and examples that are given in the proposed rule and the particular one that is of concern is I think in one of the discussion regarding evaluation, there is a statement that random assignments are the appropriate way to create comparison in control groups. I would argue that the notion of random assignments within social service programs like AmeriCorps, are not appropriate and not feasible. So I'm not sure if that was given as an example, but in the rule it has it as an actual definition of what evaluation requirements would look like.

Then the last issue relates to the whole issue of Matching, which we support as an overall strategy. California, I think, has done a really good job in terms of being a leader in terms of generating private sector resources. Our concern is, I think, and you've heard this a lot, David, that the notion of 50% as sort of a standard across the board, may be challenging, maybe to some extent arbitrary and could have some negative, unintended consequences. The example being is let's assume a program reaches 48% share over time, they wouldn't qualify by an AmeriCorps program, they would be replaced by a new program, which actually would have a lower private sector share, and therefore not necessarily achieve as much leverage as we all hoped to achieve.

Then the second issue is more of a strategic issue, in that I think we need to figure out a way to implement the Matching Rule in a way that the private sector doesn't see itself as replacing federal dollars, because in my experience, in private sector fundraising, that is typically one issue that the philanthropic community shies away from very dramatically, and that is that they don't see themselves as being a replacement, but they see themselves as leveragers and also innovators. So if the policy is implemented, in a way that it appears that the federal dollars are being replaced by private sectors dollars, grantees and non-profits will have a very difficult time making that case to the philanthropic community. That concludes my comments.

D. Eisner: Thank you very much.

Coordinator: Our next comment comes from Randi Roerick.

R. Roerick: Hi, actually many of the things that I was going to speak to, have already been addressed, so I won't necessarily recover all of them. One comment that I guess that I would like to make, goes along with the same sustainability issue. That is with FTE becoming a more meaningful factor in the selection process. I can see how that would seem like a great idea. There's something about it that doesn't necessarily fit well with us here, and part of that is when you say, "All things being equal."

We had a hard time trying to figure out how you could do that with the great diversity of the different types of sizes of programs; members, fulltime and half-time, part-time, all of that sort of thing that you can't really say, all else being equal, because that really couldn't happen. So you might want to just clarify that a little bit more. That's basically what we were thinking.

Also with the refill rule, which I think Linda spoke to previously, just another thing that we're finding with the no refill policy, is that we sometimes struggle to keep members that we shouldn't keep, because we know we can't replace them. Even if we lost some

time by having to find a new member to fill their slot, we'd be getting more of the member, more for the money, if we could in fact refill. Those are just two quick comments I had, that's basically it.

D. Eisner: Thank you, that's very helpful.

Coordinator: Our last comment comes from Myia Johnson. Myia Johnson, your line is open.

M. Johnson: Okay. Hi, how is everyone doing today?

D. Eisner: You're a little faint.

M. Johnson: Can you hear me now?

D. Eisner: Yes, thank you.

M. Johnson: Okay. Hi, I'm Myia Johnson; Project Director for the AmeriCorps Program, at Richmond Community Action Program, in Virginia. I also serve as one of the Virginia Commissioners for the Virginia Commission on National Community Service. My comment is in regard to the national performance measures that are mentioned in the proposed rule. I notice that they have two thus far, pertaining to voluntary leveraging and also a member satisfaction. I was curious as to whether anyone had considered also adding a civic education performance measure in regards to returning of the members, since in the provisions this year it has become a mandated part of member training.

D. Eisner: Are you suggesting that that would be a useful thing to add?

M. Johnson: I think so, since it's already a part of everyone's member training.

D. Eisner: Thank you. I'm sorry, I can't in this context answer that question, but suggesting that we think of adding that is a useful suggestion. Myia, did you have something else? Myia, did we lose you or are you done?

Coordinator: Your line is open.

M. Johnson: I'm sorry, how do you remove yourself from the line?

Coordinator: Press *2.

D. Eisner: Operator, do we have anybody else that would like to make a comment?

Coordinator: I show no further comments at this time.

D. Eisner: If anyone would like to make a comment at this time, before we close out the call, will you press *1. How are we doing?

Coordinator: There's one comment from Jennifer Rausch. Your line is open.

J. Rausch: Hi, thank you. I wasn't sure if you wanted to address any of these things now or not, but I thought I'd add just another comment, based on the refill policy, I know that that's not really part of the proposed rules, but I wanted to just make a comment. I'm a new program, just starting our second year in rural Minnesota. One of the things that we've seen, in regards to the refill policy is that a lot of our performance measures are based on the number of individuals that we have in the program, and we've found that we do lose some throughout the year, without being able to refill them, we're finding that we're not able to reach our goals, because those are based on the numbers that we put through, with numbers that we believe we'll have in the program.

We're seeing that effect several things, not only just performance measures in general, but also our continuation application and that we're needing to show that at some points we've not been able to reach our goal, because we've lost individuals. But also I see that affecting possible funders and that kind of goes into a side thing with looking at Match and for certain percentages throughout the next ten years, in that funders are looking at, what have you been able to do, in regards to reaching your goals. Not being able to do some of those things, because we are losing individuals, I think that makes for a tough sell, to have people engaged in your program. That would be my comment.

D. Eisner: Thank you, that's helpful. I just want to make it clear that we switched, in case anyone didn't understand earlier, we switched because we had so few folks wanting to comment, even though there's a lot of folks on the line. We are not going through subjects, so now is the final chance, if you want to talk about any of the subjects relating to rule-making, press *1.

Coordinator: I have a comment from Bonny Copenhaver.

B. Copenhaver: Yes, my name is Bonny Copenhaver; I work at Mountain Empire Community College. This comment does deal with sustainability and the match requirement of up to 50%. We are rural area of very far southwest Virginia, and we have been fortunate and very blessed, by a program that has truly helped the students that are tutored. We at this time are matching about 25%, a little over 25%. For us to raise that cash is an ongoing process, it's a year-long process for our foundation staff. I do agree with my colleague from New York that spoke earlier, about what it's like to live in areas that do not have wealth, and we happen to be one of those areas. We work very, very hard to make our match, but we just wanted it to be known that there are, I'm sure, other programs like us who will struggle to make this 50% match. Thank you.

D. Eisner: Thank you.

Coordinator: I show no further questions or comments.

D. Eisner: Thank you. Again, I want to thank everyone for joining, both participating and listening, and thank all the folks that participated in our earlier conference call and in our five meetings around the country. I want to thank the corporation staff that enabled this to be possible, and the folks that are working hard on getting the rules right. I thank, and again, wish Rosie the best of health.

Moving forward, the comment period closes on the 12th. We will then, as quickly as we can, do our redrafting and work on responding to all the comments. I think between that work, and then the work with our board and OMB and really making sure that we have things right, it would be very unlikely to expect final rules before the end of the

November, and I think that would be almost a miraculous speed. From there I think the window begins to crack open a little bit and we'll have it out after that as quickly as we can.

Again, we're going to focus as much on using this process to build predictability, to lower burdens, to definitively resolve issues that have long plagued discussions about the program in Congress and to build a stronger program, strengthen our grantees, and position ourselves for future growth. With that, I want to thank everyone again for participating.